**Central Law Journal.**

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## UNIFORM PROCEDURE THROUGH A FEDERAL PRACTICE ACT.

The American Bar Association at Cincinnati again endorsed by practically a unanimous vote the bill which has been pending in the Senate of the United States for several years to give the Supreme Court power to make rules of procedure for the law side of the federal courts. This bill passed the House on one occasion but died in the Senate Committee which has consistently refused to make a report on it. It is said that Senator Walsh of Montana is the chief antagonist.

Mr. Thomas W. Shelton, of Norfolk, Va., chairman of the American Bar Association Committee on Uniform Procedure, reported to the Association at Cincinnati the obstacles which a few members of the Senate Committee had thrown in the way of the bill which was now one of the chief objectives of reform legislation before the lawyers of the country.

Mr. Shelton declared that everywhere bar associations were simply marking time waiting for Congress to act on this important measure. Many Credit Men's Associations, Chambers of Commerce, and other lay organizations had petitioned for the passage of the bill and he declared that the country was fast losing its patience over the holding up of a measure like this by a few men who probably do not appreciate the importance and justice of it nor the demand that exists for it. "These men who are opposing this bill," said Mr. Shelton, "do not understand how important it has become to business men to have procedure as well as certain codes of commercial law uniform. There are today 96 different systems of court procedure in the United States, for each state has both its Federal and state practice. This is as useless and unnecessary as so many different languages. Business men ought not to be required to pay this heavy and unnecessary toll of counsel fees and costs every time they cross a state line or go into the Federal Courts."

In concluding his report to the Association, Mr. Shelton urged every lawyer to write some member of the Senate Judiciary Committee and make the request that the bill be reported favorably to the Senate at once. The Central Law Journal joins in that request. We do not believe that there is today before the lawyers of this country a more important issue.

The elevation of Mr. Taft to the Chief Justiceship of the Supreme Court has added fuel to the enthusiasm of the lawyers of this country for this measure. The delegates at Cincinnati were unanimous for this bill. Some lawyers who had given only lukewarm support are now enthusiastically working for it on the ground that a code of laws prepared under the supervision of one like Justice Taft who has such enlightened and liberal views on procedure is bound to be a success. Chief Justice Taft declared before the Judicial Section meeting at Cincinnati, which was attended by many appellate judges, that he was in favor of the proposed bill and was ready to do his part in preparing a code of procedure for the Federal Courts which would represent the best experience of England and America. After his address the Judicial Section again endorsed the bill and Federal Judge Charles A. Woods, of Marion, S. C., President of the Section, made this statement:

"The chief argument in favor of the bill is this: If the Supreme Court of the United States under the authority of Congress, could formulate rules of procedure and practice in the Federal courts, applicable alike to courts of law and equity, it would set up a standard of simplicity which would probably be followed by all states of the union."

A golden opportunity is presenting itself to the bar at this time to secure from Congress the adoption of a practice act regulating Federal procedure at law and from the Supreme Court the promulgation of elastic rules of procedure, which would, without doubt, in view of the earnest co-operation of the Court and of the lawyers which is promised by the favorable attitude to this reform taken by the Chief Justice and the leaders of the bar, result in the greatest code of procedure ever promulgated and would at once become the model for every state which desired to conform its procedure, in the interests of uniformity and simplicity to that of the Federal courts.

## NOTES OF IMPORTANT DECISIONS

**RIGHT OF AUCTIONEER TO CHANGE TERMS OF SALE ANNOUNCED IN A CATALOGUE.**—The New York Supreme Court (App. Div.) has announced a rule of law that requires some comment. In the case of Burling v. Dale, 65 N. Y. L. J. 1329 (July 22, 1921), that Court reverses a judgment for defendant in a suit by an auctioneer for failure of the former to carry out his contract, and holds that "auctioneers have the right, before any particular lot of goods is offered, to change the terms of sale, so long as this is done publicly in the hearing of all the bidders present, and it is immaterial that the successful bidder may not have heard the changed terms announced before the goods were offered for sale."

In this case the catalogue announced that all goods sold at the auction would be ready for delivery January 7th, 1921. Defendant was not present when the auctioneer put up the special lot of woolen goods on which he was the successful bidder. He came in after the bidding had started and did not hear the auctioneer state that as to that particular lot delivery could not be made until Jan. 21, 1921. Refusing to take the goods unless delivered by Jan. 7th, plaintiffs resold the goods for an amount less than defendant's bid and sued the defendant for the difference. In overruling a judgment for defendant, the Court said:

"Even if these goods had been in the catalogues, and so had been advertised for sale under the printed terms, still we think that plaintiffs had the right, before any particular lot was offered, to change those terms, so long as it was done publicly in the hearing of all the bidders present. The rule is well stated in Williston on Contracts (Vol. 1, § 30): 'Since it has been held that no contract for the sale of goods is complete until the hammer falls, it necessarily follows that, even though an auction sale has been advertised to be without reserve, or has been advertised to be held under other specific conditions, the auctioneer may without liability change those conditions at any time before the fall of the hammer, unless some preliminary contract can be found binding the auctioneer from the outset of the sale to observe the advertised conditions of the sale.'

"And this text is supported by these cases among others: Kennell v. Boyer, 144 Ia. 303, 305; Ashcom v. Smith, 2 Pen. & W., Pa., 211, 218; Satterfield v. Smith, 33 N. Car. 60; Wainright v. Read, 1 Desaussure, S. C. 573-582, and other cases cited in 24 L. R. A., N. S., note, p. 488. And although the buyer may have seen the advertised terms and may not have heard the changed terms announced before the goods were offered for sale, still, under the cases cited, this is immaterial."

The question in this case hinges upon the inquiry—is it the duty of the auctioneer to bring home to the bidders the change in the printed terms of sale, or is it the duty of the bidder to inquire whether the terms have been changed?

We believe that if the goods are listed in the catalogue and the terms there clearly stated and nothing appears therein to put the bidder on inquiry of a possible change in the terms of sale as to any particular article, that, in such a case, the duty should be upon the auctioneer to make known to the bidder at his peril, the change in the terms of sale. Unless this is done the acceptance of the bidder is to a different offer than that made by the auctioneer and there is therefore clearly no meeting of the minds.

It seems to us ridiculous to require bidders to inquire if there has been any change in the terms printed in the catalogue, unless the terms therein quoted are distinctly stated to be subject to change. When an auctioneer sees fit to change the advertised terms of sale, the burden should be upon him to bring home the change to every bidder present. Unless this is done there is a clear lack of mutual assent and no sale resulted.

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**FORFEITURE OF AUTOMOBILE FOR ILLEGAL TRANSPORTATION OF LIQUOR.**—That a Ford automobile should be held to be a nuisance is not so surprising as that it should be confiscated for carrying intoxicating liquor against the protests of an innocent mortgagee.

This was the decision in the recent case of State v. Stephens, Kans., 198 Pac. 1087.

In this case the automobile was charged with the illegal transportation of intoxicating liquors from Joplin to Tulsa; through the State of Kansas. The interesting fact in this case was that there was an inter-pleader by one Rothchild, claiming that he held a duly recorded chattel mortgage on the automobile, and that he had neither knowledge nor notice that the automobile was being used for the unlawful transportation of liquor.

The prosecution was under the State law of Kansas, which provides absolutely that any automobile used for the transportation of intoxicating liquor is a common nuisance and as such shall be forfeited and sold and the proceeds go to the county school fund.

The appellant (inter-pleader) contended that the interest of an innocent chattel mortgagee in such cases should be protected, and there are decisions to that effect. But the Court declared that under the Kansas Statute the forfeiting of the interest of a chattel mortgage holder in property unlawfully used is merely one of the more or less regrettable, but nevertheless necessary results incidental to the proper execution of the judgment.

The reason for absolute forfeiture in such cases is, as the Kansas Court points out, that if it were otherwise, collusion between the owners and a mortgagee would defeat the purpose of the law, since any person desiring to engage in the illegal transportation of intoxicating liquors could, by placing an incumbrance upon an automobile, minimize the financial investment and hazard of the business.

The appellant's contention that if the law was so construed as to forfeit the interest of an innocent person in the automobile, then the law to such extent was unconstitutional, was dismissed on the authority of the United States Supreme Court in the case of Grant v. United States, (41 Sup. Ct. 189), where that Court held that the Act of Congress forfeiting any conveyance employed in the illegal transportation of liquor was directed against the thing itself and not against the person. The Court said:

"It is the illegal use that is the material consideration; it is that which works the forfeiture, the guilt or innocence of its owner being accidental. If we should regard simply the adaptability of a particular form of property to an illegal purpose, we should have to ascribe facility to an automobile as an aid to the violation of the law. It is a 'thing' that can be used in the removal of goods and commodities and the law is explicit in its condemnation of such things."

## INVESTMENT, SPECULATION AND GAMBLING ON THE FLUCTUATIONS OF THE MARKET PRICES OF CORPORATE STOCKS AND OTHER COMMODITIES.

Investment, speculation, gambling on the fluctuations of the market prices of corporate stocks and commodities, taxation and the rights of minority stockholders are all subjects of importance upon which the advice of lawyers is very frequently asked. A fairly complete bibliography on this subject is given in the note.[1]

A "corner" has been defined to be "whereby somebody succeeds in buying for future delivery more property of a given kind than is possible for the seller to deliver before the day of the maturity of the contract." It is a gambling contract under Section 130 of the Illinois Criminal Code, and the Illinois Supreme Court has said that "corners" engulf hundreds in utter ruin, derange and unsettle prices, and oper-

(1) The late work of "Jordan on Investments," by David F. Jordan, Lecturer on Finance, New York University, is advertised as the only book to cover the entire field of investment, and includes a discussion of the effect of taxes on various classes of securities. "Speculation on the Stock and Produce Exchanges of the United States," by Prof. Henry Crosby Emery, of Columbia University, covers the subjects of "Stock and Produce Exchanges," "Their Business Methods," "The Economic Function of Speculation," "Some of the Evils of Speculation" and "Speculation and the Law." "Dewey on Contracts for Future Delivery and Commercial Wagers" (1886), including "Options," "Futures," and "Short Sales," by T. Henry Dewey, of the New York bar, was the first to be published in which the subject was reduced to rules. He also published in 1905 "Legislation Against Speculation and Gambling in the Forms of Trade," including "Options," "Futures" and "Short Sales." "Speculation and Gambling in Options, Futures and Stocks," (June, 1921) by James C. McMath, of Chicago covers the legislation and decisions of Illinois with references to annotations, case notes and legal periodicals. In this work the subject is treated from the standpoint of history, economics, the law and procedure. The "United States Cotton Futures Act," of August 11, 1916, is in Barnes Federal Code, 1919, Secs. 5480, et. seq. "The Futures Trading Act," recently passed by Congress, becomes effective December 24, 1921 and, it is said, will not affect trading on the Exchanges otherwise than remove operations in privileges ("Puts and Calls") which, as some operators see it, will benefit the market more than it will hurt it. It is said that trading in "Puts and Calls" will cease on the Chicago Board of Trade October 1, 1921. The Lantz bills (S. B. 283 and 284) to define license and regulate public exchanges, and to regulate sales of grain for future delivery recently be-

ate injuriously on the fair and legitimate trader in grain, as well as the purchaser, and are pernicious and highly demoralizing to the trade." The Leiter wheat deal in 1897-98 was an illustration of what can happen when the bottom falls out of a "corner." It was said that he was carrying sixteen million bushels of wheat when he acknowledged defeat.

Speculation has always existed wherever buying and selling has existed—ever since the days when Joseph cornered the grain supply of Egypt, as reported in the book of Genesis. In December, 1914, Samuel Untermeyer, of New York, delivered an address before the American Economic Association of Princeton, N. J., and the opening paragraph of this address was as follows: "It is fortunate for the country that we are at last to have a dispassionate consideration of this vastly important subject in a forum where economic problems are fearlessly, dispassionately and impartially discussed and analyzed on their merits. There has been so much of honest misunderstanding, senseless hysteria and ignorant, demagogic denunciation of the Stock Exchange on the one hand and on the other such a long, unbroken record of intemperate and misleading propaganda by the in-

fore the General Assembly of Illinois, were not enacted. Newcomb's "Inheritance Tax Charts," giving accurate and concise information of the laws of all the States of the United States and the Federal Government, with a list of corporations, is a recent publicaion. "Rights of Minority Stockholders," by Richard Selden Harvey, of the New York bar (1909) covers "The Abuses of Control," "Means of Redress," "Watered Stock," "Powers of Stockholders," "Duties of Directors" and "Stockholders Differences." "The Money Trust Investigation," by the Pujo Committee in 1912-13 is in four volumes, published by the Government Printing Office and covers, among other things, an investigation of the New York Stock Exchange. "Regulation of the New York Stock Exchange" (Hearings before the Committee on Banking and Currency, U. S. Senate, 63rd Congress on S. 3895), a bill to prevent the use of the mails and of the telegraph and telephone in furtherance of fraudulent and harmful transactions on stock exchanges, is a book of 943 pages, published by the Government Printing Office. "Future Trading" (Hearings before the Committee on Agriculture, House of Representatives, 67th Congress, First Session, April, 1921, series C), by the Government Printing Office, contains 357 pages, and the hearing resulted in the enactment of "The Futures Trading Act," which will soon be available. "The Stock Exchange from Within," by William C. Van Antwerp (1914) contains in the appendix the report of the Committee appointed by Gov. Charles E. Hughes of New York, to endeavor to ascertain "what changes, if any, are advisable in the laws of the State bearing upon speculation in securities and commodities, or relating to the protection of investors, or with regard to the instrumentalities and organizations used in dealing in securities and commodities which are the subject of speculation." "The Octopus and Lesser Evils," by John Hill, Jr., May 23, 1921, a pamphlet on the Capper-Tincher bills (grain futures) treats of the four great evils of the grain trade of Chicago, to which the abuses, at times so bitterly attacked, can be traced, and states the abuses in the order of their importance as follows: "Public Warehouse or Grain Trust;" "Puts and Calls;" "Bucket Shops;" "Private Wires in Small Towns;" "The Futures Trading Act" (H. R. 5676, known as the Tincher bill), an open letter of June 17, 1921, by John Hill, Jr., to Hon. E. F. Ladd, U. S. Senate, Washington, D. C., suggested changes in the legislation. Gaming, 20 CYC, 873 et. seq., Gambling Contracts, 14 A. & E. Enc. of Law, second Ed., 570, et. seq. "Gambling in Illinois," by George D. Smith, Illinois Law Review, May, 1921. "Conflict of Laws as to Gambling Contracts," 46 LRA (N. S.) 650, note. Contracts for sale of personal property to be delivered in the future, 1 Am. St. Rep. 752-766. The Law of Gambling Contracts is the subject of a leading article in 47 Cent. Law Journal, 169; also another leading article relating to Cotton Futures, Vol. 36, 509 (See also

ndex Digest "Gaming"). "Goldbricks of Speculation" by John Hill, Jr., of the Chicago Board of Trade (1904) was dedicated to the legitimate brokers of the great Exchanges, their Patrons and the Trading Public, in the hope that it would divorce forever in the public mind legitimate speculation from gambling and swindling. It is a study of speculation and its counterfeits and an expose of the methods of bucket shop and "Get-Rich-Quick" swindles. Blue Sky Laws are in force in 38 states. In Reed & Washburn's Blue Sky Laws, the law of each of the various states is analyzed and summarized with respect to the general character of the law, the persons affected, and licensing and supervision and the criminal and civil penalties. The May, 1910 number (264) pages) of The Annals of the American Academy of Political and Social Science (Philadelphia) is devoted wholly to stocks and the stock market and contains a thorough treatment of the subject, also "A Bibliography on Securities and Stock Exchanges," by Prof. S. S. Huebner of the University of Pennsylvania. The September, 1911 number of the same publication (364) pages is devoted wholly to "American Produce Exchange Markets" and is also a thorough treatment of that subject. Its contents are as follows: "The Functions of Produce Exchanges;" "Methods of Marketing the Grain Crop;" "Classification of Grain into Grades;" "Grain Inspection in Illinois;" "The Crop Reporting System;" "Current Sources of Information in Produce Markets;" "Governmental Regulation of Speculation;" "Factors affecting Commidity Prices;" "Board of Trade of the City of Chicago;" "New York Produce Exchange;" "Merchants Exchange of St. Louis;" "The Exchanges of Minneapolis Duluth, Kansas City, Omaha, Buffalo, Philadelphia, Milwaukee and Toledo;" "Cotton Exchanges and Their Economic Functions;" "Financing of Cotton;" "The Coffee Market;" "Communication—shipping facilities between the United States and South America." Especial attention is directed to the article of Prof. Carl Parker of Columbia University on "Governmental Regulation of Speculation." "Some Thoughts on Speculation" is the title of a Monograph by Frank Fayant, of New York, April 1, 1909 (52 pages, very small type) and its contents are (1) "The Function of Speculation;" (2) "The Function of the Stock Markets;" (3) "Legislation Against Speculation;" (A) "English Legislation;" (B) "German Legislation;" (C) "American Legislation;" (D) "The Argument against State Legislation;" (4) "Laws relating to Speculation." (5) "Bibliography." "Speculation on the New York Stock Exchanges (1913)—studies in History Economics and Public Law," by Algernon Ashburner Osborne, Instructor in Economics and Industry, University of Pennsylvania, edited by the Faculty of Political Science of Columbia University (172 pages). "The Perilous Game of Cornering a Crop," by Isaac F. Marcosson, The Munsey, August 1909, with portraits of Patten, Harper and James R. Keene.

terested champions of the Exchange to justify the abuses of the system and its irresponsible form of organization and such persistent misrepresentation of its critics that it is a positive relief to find one's self in an atmosphere where the subject will receive the judicial treatment that its commanding public importance demands."

The two questions discussed by Mr. Untermeyer in that address were: (1) Should the Stock Exchange be subjected to regulation? (2) Should such regulation include the suppression or restriction of speculation? In this address Mr. Untermyer further said: "I have read with interest the articles, addresses and testimony of Prof. Emery on this subject and would be at many points in accord with his views as to the value of speculation, if it could be disassociated from manipulation; but I am unable to agree to his argument that there should be no limit even upon honest speculation." Mr. Untermeyer was Consul for the Pujo Committee and Professor Emery is recognized authority on Economics. The writings of these men and the very able presentation of the subject of Governmental Regulation of Speculation by Professor Carl Parker of Columbia University in the September, 1911 number of the annals of the American Academy of Political and Social Science contain about all that can be said on the great economic question of how far, if at all, speculation should be controlled by law.

In political economy there are two conflicting tendencies—one, that of *laissez-faire* accepted in the main by Adam Smith and by John Stuart Mill, and forming part of the political system of English Liberals and of doctrinaire democrats in this country. Business should be left free, so it is argued, to adjust itself. For the Government to interfere in the making of contracts creates a greater evil than the evil it is intended to cure. The other is the conflicting school which starts from an ethical or or police basis. Certain business contracts, it says, are immoral and must be prohibited. The same subject was, many years ago, made the subject of an extensive note by Dr. Francis Wharton.[2]

That it is within the power of the State to prohibit speculation on the Exchanges in commodities and corporate stocks on margins would seem to be settled by the case of Otis v. Parker.[3] A law may infringe in a degree upon the property rights of citizens, but private right must be deemed secondary to the public good. It has been said that the laws relating to this subject are unfair and not in accord with economic teachings. While this may be true, yet the laws do exist and they should be respected and enforced. What additional legislation there should be by Congress and the States to prohibit or regulate speculation on the Exchanges and to prohibit and punish gambling both on the Exchanges and in brokers' offices is for the law makers to determine, but it is clearly the duty of the judiciary, the bar and the public officials to enforce the laws that are now in force. The economic question of Governmental regulation of the Exchanges must be settled by the law makers after full consideration of the existing evils and in the interest of the producers and consumers; the legislative power is in the States, and Congress can legislate only in pursuance of the powers given by the Constitution excepting, of course, in the District of Columbia where the police power may be dealt with by Congress.

A "future" is a contract of sale where the stock or commodity is sold to be delivered at some time in the future. An "option" is a privilege and in the grain trade "options" are known as "puts and calls," "indemnities," "ups and downs," "bids and offers," and by whatever name they are called they simply give to the purchaser of the privilege the right to exercise it or not, as he may elect, e. g., privileges are not dealt in during market hours but have heretofore been dealt in for an hour after the close

(2) 11 Fed. Rep., 201.
(3) 187 U. S. 606.

of the market each day. They are the most pernicious form of gambling and in 1917 a wealthy Chicagoan is said to have lost a great many millions of dollars dealing in "options." They can be dealt in from the office boy to the millionaire. "Bucket shops" are places where grain or stocks are not bought or sold, but where the parties merely bet on the figures on the blackboard which show the fluctuations of the market prices. In effect, so far as the public is concerned, there is no practical difference between a bucket shop and a broker's office where men go through the form of buying and selling stocks or commodities without any intention of accepting or delivering the stocks or commodities, but with the intention of settling on "differences" between the market price at a given time and the price at which they ostensibly bought or sold the stock or grain. No one ever saw the sign of "Bucket Shop" on the door or window of a broker's office, but many times these places have been bucket shops in effect, if not in name.

In drawing the line between investment and speculation it should be kept in mind that investment pre-supposes an income and that speculation pre-supposes a profit. An income is certain, or relatively certain and speculation is uncertain. In drawing the line between speculation and gambling in farm products when parties are going through the forms of purchase and sale of "futures," it is the *intent* that governs. The Courts say it is the intent of the parties—but what parties? The customer and the broker, or the customer and the man with whom the broker deals on the Board of Trade? The Illinois Supreme Court has held, in Jamieson v. Wallace,[4] that under the Illinois Criminal Code, Sec. 130, the intent of the customer and the broker alone is material and it makes no difference if the broker actually purchases the stocks. In Walker v. Johnson,[5] Judge Gary said "that the Appellants intended no gambling with the parties with whom they contracted but, on the contrary, intended to take and pay for what they bought, and deliver what they sold, cuts no figure, if they knew that the Appellee intended gambling or, but for their own obstinacy, would have so known. And in Lamson v. West,[6] it was held that the question whether a transaction between a broker on a grain Exchange and his customer is a gambling transaction in no wise depends upon the relation between the broker and the public with whom he deals in carrying out his customer's orders. It has been so held in many other Illinois cases.

Disguised gambling in grain futures must necessarily, in most cases, be proven by circumstantial evidence. The intention of the parties in this regard may be established, not merely by their assertions, but by all the attending circumstances of the transaction and some Courts have gone so far as to hold that, in seeking to ascertain the intentions of parties to alleged grain transactions, it would not do to place any great stress on their own declarations, whether under oath, or not. The intention need not be proven by express declarations or statements of the parties, but may be established by the attending circumstances of the transaction.[7] Dealing in "futures" or "options," to be settled according to the fluctuations of the market, is void by the common law, for, among other reasons, it is contrary to public policy.[8]

The great evil of speculation is "manipulation." The market is ruled by the amount of money that is brought to bear upon it. If no one was injured but the speculators, the public might not be so much interested in the subject, but when producers and consumers suffer by the evil practices, and when hundreds of thousands of citizens—the outside public—not connected in any way with the speculation or gambling are made to suffer the consequences of it,

(4) 167 Ills., 388.
(5) 59 Ills. App., 448.
(6) 201 Ills. App., 251.
(7) 215 Ills., 348.
(8) 125 Ills., 501.

can it be said that speculation should not be regulated by law, or that gambling should not be prohibited by law.

The enforcement of the law against wagering and gambling on the fluctuations of the market has not been and is not efficient, for several reasons, the principal one of which is because of the difficulty in securing evidence to prove the violation of the law. Undisguised gambling can easily be proven, but disguised gambling is more difficult of proof. Another reason is that lawyers and Courts are not, as a rule, familiar with the business carried on by the brokers and the Exchanges and with the transactions that are legitimate and those that are not legitimate. A still further reason is, as stated by an eminent law writer, that the cases are, a great many times, not properly prepared and presented to the Courts. Courts decide questions raised by the issues formed by the pleading and not questions that are not involved in the issues presented. Statutes enabling losers in gambling transactions to recover back their money generally limit the time within which such actions can be commenced to six months and there is also a limit placed on the time within which actions may be commenced by others to recover treble the amount lost. These actions are for a penalty that cannot be enforced in any other State.

Thousands of gambling transactions are apparently carried on by customers giving their orders in one State to be executed in another. The question then arising is, by the laws of what State are the transactions to be governed? In other words, if a man gives an order through his broker in Iowa, to be executed in Illinois and it is, in fact, a gambling transaction, is the gambling done in Iowa, or in Illinois?[9] No small part of the gambling that is supposed to be done in Illinois is in fact, done in other States and the remedy, if any, must be sought in those States. To make the enforcement of the law more effective, additional legislation is needed.

Tons of literature have been written and distributed by political economists, brokers and others on the subject of speculation on the stock and grain Exchanges, but little has been written on the subject of stock and grain gambling, except by the Courts. It is not the policy of Illinois to allow gambling, but it would seem that the small gambler is punished and the respectable gambler is not. In the language of the late James Harold Romain, "Why this discrimination?" His book, in defense of gambling—the only book in defense of gambling I know of, is a masterpiece by a scholar. The Board of Trade of Chicago and the Exchanges throughout the country are not, as some people suppose, to be condemned. They are a public necessity and through them great good is accomplished. The evil practices are not so much on the Exchanges themselves as they are in some of the offices of the members of these Exchanges. The Exchange is merely a meeting place and the majority of its members are high grade, business men. The problems to be solved by legislation—Federal and State—are very largely those set forth in the report of the Hughes Committee hereinbefore referred to.

The Capper-Tincher bill, according to a synopsis made by the Chicago Tribune seeks to:

Abolish transactions known as "indemnities" or "puts and calls" by levying a prohibitive tax.

Admit co-operative associations of producers to membership in grain exchanges.

Permit dealing in futures, but only in certain markets, thirteen in number, designated by the secretary of agriculture.

Empower the Secretary of Agriculture to compel grain exchanges to make regulations preventing manipulation of the market.

Require exchanges to exercise diligence preventing dissemination of false crop reports.

(9) An instructive case on this point is reported in 46 LRA (n. s.), 650, and is followed by a case note. The same decision is reported in 124 CCA. 206. Another instructive case on this point is in 48 CCA. 729.

Require exchanges to keep records of all transactions for inspection by the Secretary of Agriculture or Department of Justice.

In an editorial in the same paper, of August 26, 1921, there appeared the following:

"By postponing its decision to eliminate trading in 'puts and calls' until it heard that both houses of congress had adopted the conference report on the Capper-Tincher bill regulating grain exchanges, the Chicago Board of Trade indicates that in the matter of deathbed repentances it is keeping just one jump ahead of the undertaker.

"It had better be careful or the undertaker may carry it away some day with its soul unshriven. After the Illinois legislature's defeat of the Lantz bills, which would have virtually destroyed the Board of Trade in Chicago, *The Tribune* called to its attention certain admissions of error in its practices which were made in the course of its struggle for life. Among these malpractices were trading in 'puts and calls' and the misuse of the private wire system, both features of manipulation and speculation which could not be defended on the ground on which *The Tribune* defended 'hedging' and legitimate trading in futures.

"Almost immediately afterward officials of the board announced that such evils, which had given ground for the concerted attack upon the very existence of the exchange, would be corrected. It even named a committee to correct its errors. But, relieved of the attack which imperiled its life, the board seems to have forgotten its danger.

"Now comes the Capper-Tincher bill, and again the board sees its danger and decides to reform. Let us hope that the present reformation will be complete and effective. We believe the Board of Trade is a valuable marketing medium for the farmer and a valuable asset for Chicago. We would hate to see it abolished. But if it is not to be abolished it must keep faith with the people.

"The Lantz bills were not the first attack upon it. They probably will not be the last. It must prepare now to conduct its affairs in such a manner that no legitimate arguments can be offered against it in the future."

Professor Emery closed an article on "Some Evils of Speculation" with the following: "It will be seen then that speculation by a wide public has its advantages, but that these advantages are secured at an enormous cost. The widening market is simultaneously the cure of some evils and the cause of others. The former are mainly economic, the latter moral. Neither should be disregarded nor minimized. The difference in the nature of these evils makes comparison difficult. Professor Cohn begins a recent essay on speculation with the assertion that business methods cannot escape the test of moral judgment. No one today will question the truth of such a statement. Yet one may well pause before the difficult problem of determining at just what point the evil of public speculation becomes too high a price to pay for the advantages of the active market. Gaming must be specially pleaded and there is, in 181 Ill., 199, an approved form of declaration in an action to recover treble the amount lost in gambling on grain. The evidence sufficient to establish the fact that a transaction in grain or stocks was a gambling transaction is shown in a great many cases in McNeil's Ill. Ev. 585, et seq., and 217 Ill. App., 70, is a late case on the sufficiency of evidence. Inference as to the character of the transactions arising from the fact that they were upon margin is the subject of a Note in 22 LRA (n. s.), 174 and instructions in such cases may be seen by reference to Cranston's instructions to juries, Vol. 1, Chap. 35 (Gaming.) The intention of a broker and his customer to engage in a series of gambling transactions may be established by *implication* and the customer is entitled to have the jury so instructed.[10] In Missouri the purchase or sale of a commodity for future delivery is void when only one of the parties intends it as a wager on the market movements, to be settled by payment of differences.[11]

To any person well informed on the subject of what is being done on the great

(10) 20 Ill. App., 76, see also McMath's "Speculation and Gambling, 39, and 20 Cyc, 965, as to instruction.

(11) 118 C. C. A. 542, Mo. Anno. Stats., 1906, Vol. 2, Sec. 2438.

stock and produce Exchanges of the country, it must be apparent that the Exchanges should not be interfered with as to the transaction of legitimate business further than necessary to protect the public, but that gambling on the Exchanges, and more especially in the offices of some of the brokers, should be suppressed. The welfare of the people is the paramount law and a careful consideration of the Hughes Committee Report will serve as a guide, to some extent, in the preparation and drafting of wholesome legislation.

JAMES C. MCMATH

Chicago, Ill.

## FIXTURES—GRAND STAND SEATS.

### HANDLAN v. STIFEL.

232 S. W., 245

St. Louis Court of Appeals, Missouri. June 21, 1921. Rehearing Denied June 29, 1921.

Where a lease of land for a baseball park provided the lessee should erect a "suitable grand stand," and that if the lessee did not exercise his privilege to purchase the land, then at expiration of the term the grand stand and all other improvements made on the property during the term should become the property of the lessor, rows of seats, placed in the grand stand by the lessee, secured to the wooden floor by light screws, and easily removable, were not "fixtures," and an integral part of the grand stand passing to the lessor on expiration of the term, but were removable by the lessee.

ALLEN, P. J. This is a suit in equity whereby plaintiff seeks to enjoin the defendants from removing certain seats from a "grand stand" in a baseball park formerly occupied by the defendants under a lease from plaintiff. At the time of the instituton of the suit some of the seats in question had been removed from the grand stand, but under a stipulation of the parties they were restored to the premises, and a temporary restraining order theretofore granted by the court was dissolved. The trial below upon the merits resulted in a judgment in favor of the defendant, dismissing plaintiff's petition, from which judgment plaintiff prosecutes the appeal now before us.

There is but little, if any, dispute as to the facts. Plaintiff was the owner of a tract of land located at Grand and Laclede avenues in the city of St. Louis, suitable for a baseball park. On January 22, 1914, plaintiff leased the land to the defendant Stifel, as lessee, for a term of three years, beginning April 10, 1914, at a yearly rental of $10,000, which lease was subsequently assigned by Stifel to his codefendant the St. Louis Federal League Baseball Company. In addition to the rental the lessee agreed to pay all taxes, general and special, assessed against the leased premises, and as a further consideration agreed to erect a "suitable grand stand" on the property during the term of the lease, at his own cost and expense. The lease does not prescribe the purposes for which the lessee shall use the premises; and there is no restriction or limitation upon the use thereof, except that the lessee shall not use the property, or suffer it to be used, for any purpose or proceeding prohibited by law or ordinance. The lease provided that the lessee should have no right to make any sublease, in whole or in part, or assignment of any of his right, title, or interest under the lease, until the above-mentioned grand stand had been erected and paid for by him. By the terms of the lease the lessee was granted the privilege of purchasing the property at any time during the term, for $250,000. The lease further provided as follows:

"In the event of the failure of the lessee to exercise the privilege to purchase, then said grand stand and all improvements made on aforesaid property, during the term of said lease, shall be and become the absolute property of lessor at the expiration of said term."

Pursuant to the terms of the lease, Stifel, as lessee, erected a grand stand upon the property and then assigned the lease to the baseball company, a Missouri corporation engaged in giving baseball exhibitions for profit. Thereupon said company installed in the grand stand more than 6,000 seats or chairs for the accommodation of its patrons, the seats being installed in rows conforming to the aisles and exits, and in order to prevent them from tipping over they were screwed to the floor of the grand stand by small screws, and were bolted together in such manner as to enable any seat to be readily removed. In the boxes which were in the forward part of the grand stand, there were loose or detached seats or chairs, but they are not here in controversy. In addition to the grand stand, the company erected other improvements on the leased premises, and in April, 1914, began giving baseball exhibitions there. The right of purchase given to the lessee was not exercised and prior to the expiration of the term of the lease the baseball company began to remove the seats, resulting in the institution of this suit.

During the pendency of the appeal in this court, both plaintiff and defendant Stifel have died, and the cause has been duly revived in favor of Eugene W. Handlan, Alexander H. Handlan, and Edward W. Handlan, executors of the will of A. H. Handlan, deceased and against Ella Stifel, executrix of the will of Otto F. Stifel, deceased.

The only question here involved is whether these seats remained personal chattels, or whether they became a part of the realty so as to pass to the plaintiff, as lessor, upon the expiration of the lease. What is termed the "floor" of the grand stand was of wood, and consisted of tiers of low platforms, each elevated perhaps 11 inches above that in front of it, upon which the seats rested. While the seats were fastened to the wooden surface beneath them by light screws, the evidence shows that they could be readily removed, with reasonable care, without doing any material damage to the surface upon which they rested. The argument for appellant is not here predicated, to any extent, upon the character of the annexation, but proceeds rather upon the theory that the agreement of the lessee, in the lease, to provide a "suitable grand stand," included the furnishing of seats or chairs therein. It is said that when the lessee contracted to erect a suitable grand stand he contracted to furnish everything necessary for that purpose; that "a grand stand without seats would be as useless and anomalous as a grand stand without a roof; and that the lessee would have no more right to remove the seats than to remove the floor.

Whether a chattel which has been annexed to the freehold becomes a part of the realty or otherwise is in general a question depending for its solution upon what may appear as to the actual or presumed intention of the parties. Such intention may be inferred from the nature of the article affixed, the relation to the freehold of the party making the annexation, the character of the annexation, and the purpose for which it was made. Where the question arises between landlord and tenant, as here, the law looks with favor upon the right of the tenant to remove as personalty, articles furnished or installed by the tenant for the purpose of his occupancy, though they may ordinarily be termed fixtures. See Spalding v. Columbia Theatre Co., 189 Mo. App. 629, loc. cit. 635, and cases cited, 175 S. W. 269. See, also, Electric Co. v. Gottlieb, 112 Mo. App. 226, 86 S. W. 901; St. Louis Radiator Mfg. Co. v. Carroll, 72 Mo. App. 315; Walker v. Tillis, 188 Ala. 313, 66 South, 54, L. R. A. 1915A, 654.

In general, when the annexation is made by the tenant, and is of such character that the chattel may be removed without material injury to the freehold, the presumption prima facie is that he did not intend to make a permanent accession to the freehold, but intended to reserve to himself the title to the thing annexed. See Ballard v. Alaska Theatre Co., 93 Wash., 655, 161 Pac. 478; Newcastle Theatre Co. v. Ward, 57 Ind. App. 473, 104 N. E. 526. In the instant case, the tenant should be accorded the right to remove the seats in question, being essentially trade fixtures provided by the tenant and removable without material injury to the freehold unless the terms of the lease should be held to be such as to have the effect of prohibiting such removal. The lease does not mention seats or chairs, eo nomine, at all. The lease merely provides that the lessee shall "erect a suitable grand stand," and that, if the lessee does not exercise his privilege of purchasing the land, then, at the expiration of the term, "the grand stand and all other improvements" made on the property during the term shall become the property of the lessor. If these provisions operate to prevent the removal of the seats in question, it must be upon the theory, advanced by appellant, that the requirement to erect a grand stand includes, by intendment at least, a grand stand that is equipped with seats; and that when so equipped the seats became an integral part of the structure. Much stress is laid by appellant upon the use of the word "suitable," but under the circumstances, it is by no means clear that by the use of that word, without qualification or explanation anything more was meant than that the grand stand should be "suitable" in size, proportion, architectural design and safety, considering the character of the tract of land, or park, and the other conditions present. While it may be reasonable to suppose that a grand stand, when in use, will be provided with seating facilities of some character, the term, "grand stand" does not in itself, we think, imply permanent seats or seating facilities of any particular nature. And we think that it cannot well be held that by the terms of this lease the lessee bound himself to equip the grand stand with seats to become and be an integral part thereof. We are inclined to the view that the provisions of the lease in this respect would have been complied with by the erection of a suitable structure for use as a grand stand though the lessee had seen fit to use therein loose or detached chairs when the premises were in use or had used mere benches for seating purposes. In this connection it may be noted that

the word "erect" is of narrow import, suggesting the idea that the parties had in mind the erection of the main structure. Nothing is said as to equipping the structure, nor does the lease provide for a grand stand fully equipped. Had such been the intention of the parties, it would have been easy indeed to have expressed it in unmistakable language. And we are of the opinion that the right of the lessee to remove "fixtures" of this character which would otherwise exist, ought not to be held to be taken away by terms of such doubtful import as those employed in this lease.

In Ballard v. Theatre Co., supra, the lease provided that the lessee should erect a "theatre building," of standard construction, to cost at least a certain sum, and to become the property of the lessors. The lessee company completed the building, equipped it, and operated it for a time as a moving picture theatre. Upon surrendering the premises, the lessee undertook to remove from the building certain equipment, including chairs, when the lessors brought suit to enjoin the removal thereof. It was held that the lessee had the right to remove such equipment; the injunction being denied. It is true, as pointed out by appellant, that in the Ballard Case the requirement was that the lessee erect a "theatre building," not that the lessee provide a "theatre." But in the case before us we think that the term "grand stand," as used in the lease, should be taken as having reference to the main, permanent structure contemplated; and should not, under the facts of this record, be extended by implication to include matters of equipment provided by the lessee, which may be classed under the head of trade fixtures, especially in view of the fact that the right asserted by appellant is in the nature of a forfeiture.

In Sosman v. Conlon, 57 Mo. App. 25, cited by appellant, the controversy arose, not between landlord and tenant but between the owner and one claiming a mechanic's lien. Likewise, Grosz v. Jackson, 6 Daly (N. Y. Com. Pl.) 463, Waycross Opera House Co. v. Sossman et al., 94 Ga. 100, 20 S. E. 252, 47 Am. St. Rep. 144, Halley v. Alloway, 10 Lea (Tenn.) 523, and Dimmick v. Cook, 115 Pa. 573, 8 Atl. 627, cited by appellant, are cases which arose under mechanics' lien statutes. In Filley v. Christopher, 39 Wash. 22, 80 Pac. 834, 109 Am. St. Rep. 853, the action was between the administrator of a deceased mortgagor and the purchaser at a sale under a judgment foreclosing a mortgage. In Neher v. Viviani et al., 15 N. M. 460, 110 Pac. 695, the controversy arose out of a contract concerning the erection of an opera house, and not between landlord and tenant. In Gould v. Springer, 206 N. Y. 461, 99 N. E. 149, the action was between landlord and tenant, but the question involved pertained to the obligation of the tenant to repair defective chairs in a theatre, under the terms of a lease. Language may be found in these cases apparently lending support to appellant's contention, but the facts involved are not such as to make any of them persuasive authority in the instant case. Nor do we think that the decision in Spalding v. Columbia Theatre Co., supra, is here in point.

We are of the opinion that the judgment is for the right party, and that it should be affirmed. It is so ordered.

NOTE.—*Seats as Fixtures.*—In Gould v. Springer, 206 N. Y. 641, the Court said: "Chairs so made as to conform to the plan and shape of the theater, fastened to the floor and used for no other purpose except to seat the audience, are fixtures attached to the realty. The old theory which made physical annexation the sole test has been expanded so far as to include intention, use and adaptability. This seems to be conceded by both parties and the contention is in accord with the authorities. The question is usually a mixed one of law and of fact and the court could have found that the chairs which were repaired were an indispensable part of the theater and that they came within the provisions of the twenty-sixth clause of the lease. Unlike the scenery, wardrobe, properties, etc., mentioned in the eleventh clause, the chairs were not mentioned at all in the lease, but passed only as a part of the building itself, which was leased as the Grand Opera House."

"The building in which these seats or iron chairs were put up was constructed as a theater, and the seats for the audience were as much a part of the theater as any other portion of the structure. There could be no doubt wooden seats or benches which were formerly in use in the parquette or pit of a theater, nailed to the floor, would be regarded as a part of the structure itself. * * * Instead of the ordinary benches for the use of the audience in the pit or parquette of a theater, a patent iron chair has come into use in the last sixteen or seventeen years, but the manner in which these iron chairs are put down and adapted for the use of the audience make them as much a part of the structure as the wooden benches which were formerly nailed to the floor." Gross v. Jackson, 6 Daly 463.

In Neher v. Viviana, 110 Pac. (N. M.) 695, the question arose as to the proper meaning of the term, "a modern $30,000 theater building," as descriptive of a building which the plaintiff had agreed to erect. The trial court defined this phrase in an instruction as follows: "You are further instructed that the phrase, 'a modern $30,000 theater building,' includes, in addition to the bare building, the usual, necessary, permanent equipment, such as plumbing, heating and lighting apparatus, seats, curtains and scenery adapted to and intended for use in that particular building,

but not the piano, furniture, carpets and similar articles movable and practically as well adapted to use elsewhere."

In the case of Waycross Opera House Co. v. Sossman, 94 Ga. 100, in discussing the question as to whether the seats, scenery, etc., of a theater were an integral part thereof, or mere chattels used in connection therewith, the Court said: "In a strict sense, these articles, or some of them, may not be fixtures; but they are nevertheless essential to the completeness of a building of that kind. They necessarily form a part and parcel of the edifice itself."

## ITEMS OF PROFESSIONAL INTEREST.

### A FAMOUS TRIAL OF OLD DAYS.

The most famous of all murder trials in English legal history, is that of Thurtell and Hunt, which took place at Hertford Assizes, before Mr. Justice Park, in January, 1823. Its only rivals in celebrity, perhaps one ought rather to say notoriety, are those of Eugene Aram, Courvoisier and Madeline Smith. The former, of course, has a dramatic interest which must last as long as men are interested in the lives and misfortunes of their fellows. The trial of Courvoisier for the murder of Lord William Russell at Swiss Cottage in 1830, is of immense interest to lawyers, because it raises the perennially recurring question—what should an advocate do when his client has confessed to him that he is guilty. And the last was intensely interesting to a generation less acquainted with the possibilities of feminine audacity than our own; it is not likely to retain in the twentieth century the fascination it had for the second moiety of the nineteenth. But the case of Thurtell and Hunt, while lacking in any exceptional characteristics, seems likely to be remembered as long as there remains a Criminal Bar in England.

One other famous trial, or rather series of trials, must also be mentioned when any attempt is made to enumerate the classical forensic occasions of English criminal jurisprudence. That is the case of the Tichborne claimant. Here there was no murder, nor indeed a tragedy of any kind, to enlist human interest. There were two trials, a civil claim to an ancient landed estate, and a criminal prosecution of the claimant for perjury. The subject was one which will always have a fascination for the populace; it represented the everlasting struggle of the masses and the classes in a very piquant form. A poor man's son claimed fraudulently to be the heir to an old estate. The masses sided with him because he was a poor man kept out of his own! The mere fact that he was an imposter, all unconsciously, added to that sympathy. The classes hated him, as a vulgarian impudently desiring a place in the sun for which his manner and his appearance and his accent proclaimed him obviously disqualified. A dim suspicion that he might really be a genuine victim of circumstances, a gentleman born who had lost the characteristics of his class and would not do them credit probably rather increased the disfavor with which society as a whole watched the progress of Arthur Orton's impudent pretensions to be Sir Roger Tichborne. Moreover, the Chief Justice who presided, Sir Henry Hawkins who prosecuted, and Dr. Kenealy who defended, were all giants in the forensic world. The trial was dramatic, not only in the incidents which the testimony of its multitudinous witnesses brought to light, but also in the scenes between bench and bar.

No such interest can be claimed for the case of Rex v. Thurtell and Hunt (supra). The crime was unspeakably sordid. The counsel on both sides were not men of any distinction, nor were they permitted—by the harsh laws then in force—to deliver addresses to the jury. No displays of eloquence marked the progress of the case. Nor was the trial judge brilliant; he was notorious as one of the "old women" of the courts, and his banalities mark every stage of the proceedings. The trial, too, lasted but one day and a half. At first sight it seems difficult to account for its extraordinary fame.

Yet of that fame, with contemporaries and even among literary lawyers and law students, right down to the present day, there can be no doubt. Innumerable accounts of the trial exist. Sergeant Ballantine devotes to it some of his most brilliant pages. George Borrow, author of the Bible in Spain, visited the convicted murderer in jail before his trial, and gave to the world an affecting account of his sins, his sufferings, and his fascination. Archbishop Whateley, too, wrote about them in language better suited to a romantic hero than a brutal murderer. Broadsheet after broadsheet—the predecessors in that age of the modern "Penny Dreadful"—was issued in the year following his execution, describing all the scenes of his trial and his expiation at the gallows. And some famous verses, the authorship of which is by some attributed to Borrow and by others to Whateley, commemorates the crime in those familiar lines:—

"They cut his throat from ear to ear,
His brain they battered in;
His name was Mr. William Weare,
Who dwelt in Lyons' Inn."

What, then, gave to the sordid crime its celebrity? Before answering, to the best of our ability, this puzzling question, we must narrate briefly the main incidents of the crime for the benefit of those among our readers who have forgotten them. A brilliant account, including a verbatim report of the trial with some interesting appendices, will be found in a recent volume of the "Notable Trials Series," edited by Mr. E. R. Watson. To Mr. Watson's introduction, lucid and picturesque, we must refer those readers who wish in succinct form more detailed information about the case.

Weare, the victim of this crime, was a retired bookmaker and billiard marker, who lived in chambers in the famous old inn, now pulled down, then known as "Lyons' Inn." He had one peculiarity which proved his undoing, a distrust of banks and of solicitors. So he carried in his pocketbook all his savings, investments and bank notes, amounting to thousands of pounds. This fact became known to a broken ex-marine officer named Thurtell, who had been a pugilist and a trainer, not to speak of other occupations even less reputable of which he had made trial. Thurtell determined to decoy Weare into the country and murder him. So, in October, 1822, he persuaded Weare to leave with him in a cab with a gun for a few days' shooting in Hertfordshire. Thurtell drove him along the Great North Road in a gig belonging to a confederate named Probert, who had a cottage near Radlett, off the road to St. Albans. This gig had a bald-faced nag, a fact which has become famous Thurtell drove Weare towards Radlett; they stopped at many an inn for "refreshment." and only approached Radlett late at night. Then Thurtell shot his victim, and, to make sure, cut his throat with a hunting-knife. Probert and another confederate, a wretch named Hunt, then appeared on the scene, divided the booty between them, and threw the body away —first into a pond at Probert's cottage, afterwards into another pond some distance away. Probert's wife, without their knowledge, saw much of these subsequent events, and was an important witness at the trial.

The execution of the crime was almost inconceivably clumsy. The shot fired was heard by a laborer. He reported it to a magistrate of Hertfordshire. The latter visited the scene, found blood on the ground, and traced the body to the lane running past Probert's cottage. Other witnesses then stated that they had seen Thurtell driving Probert's gig; the bald-faced nag was the source of their identification. The gig, when examined, had been recently washed. Thereupon, Thurtell, Hunt and Probert were arrested. Hunt confessed, and showed the spot where the body was found and identified. Probert turned King's evidence, and his wife was a principal witness; had not Probert been allowed to turn approver, her evidence—of course —would not have been admissible. The case was plain. Notwithstanding an eloquent speech in his own defense, Thurtell was convicted and hanged. Hunt, also convicted, was reprieved and transported.

Why, in such sordid circumstances, did the crime achieve such fame? There were two reasons. Thurtell was a favorite of the "fancy," or ring of pugilists and spectators; he was famous much as a great kinema actor, say Charlie Chaplin, is famous today. The public were intensely interested in his fate. Again, he was an ex-officer who had fought for his country in the great Napoleonic war; such an ex-service man commanded in those days a sympathy not wholly unknown today, among the common people, in a similar case, where the accused have fought for their country. Nor is this strange. The instinct of the herd feels that a man who has been brutalized by the experience of war, is deserving of pity almost as much as blame if he commits a brutal crime. —*Solicitors' Journal.*

## BOOK REVIEW.

### McMATH'S SPECULATION IN GAMBLING.

Mr. James C. McMath, well-known lawyer and law writer of Chicago, Ill., has just published an accurate and concise treatment of the subject of Speculation and Gambling in Options, Futures and Stocks.

The subject of this new book is interesting. There never has been a period in our history when gambling and speculation have been more common than in the last ten years. More millions have been lost by the "dupes" and the "lambs" of the stock and grain markets than there have been thousands won. The game is fixed for the professional gambler to win nine out of ten times, but still the fools go in hoping that they may belong to the lucky "tenth."

The law is against gambling and a transaction tainted with the element of speculation is illegal. This rule of law is well known, but the decisions of the courts in applying this rule and in enforcing the remedies which the

law gives to the parties to a gambling transaction are not so well known. No modern law book sufficiently covers the subject and while there have been many valuable articles on the subject in our law periodicals, no one has hitherto brought them together in convenient form for use by the practicing lawyer. This, however, has been done by Mr. McMath in a way that will commend itself to every lawyer. While the work calls particular attention to the Illinois cases, with which the author is naturally most familiar, it is not in any sense a local book. The author treats the subject from the standpoint of the legal historian and economist. He seeks to find the reason for the law's attitude and the public dangers sought to be averted by the law in suppressing the tendency toward gambling. This method of treatment leads the author to suggest some new laws which will more effectively guard the public welfare at this point.

Not the least benefit which this book confers on the lawyer is the furnishing of a more correct nomenclature and more accurate definitions of terms used in describing the various transactions which we call generally speculation and gambling. He calls attention to clear distinctions existing between a "future" and an "option." He defines "wagers," "future deliveries," "puts and calls," etc., and thus enables lawyers interested in particular cases to make distinctions that may be important to their success.

This is a book which is not written for profit alone; it is not a pot boiler. The author is a lawyer of large practice, but with high ideals as to the duty of the lawyer to serve his profession and to assist in the development of the law. For the labor and thought expended in producing this volume, the author is to be congratulated and should receive grateful recognition on the part of the profession.

Bound in paper and buckram and published by the author.

## HUMOR OF THE LAW.

An income-tax form was returned recently with the following remark, "Sir, I belongs to the Foresters and don't wish to join the Income Tax."

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In a suit recently tried in Boston it happened that one of the witnesses was a personal friend of a lawyer on the other side and that it was his duty to cross-examine her. By reason of their friendship he was if possible, a trifle more personal with her than he would have been with another witness.

"Can you be trusted with a secret?" he asked at one juncture of the cross-examination.

The woman drew herself up proudly. "You have known me for ten years haven't you?" she asked in turn.

"Yes."

"Well do you know how old I am?"—*Pittsburg Chronicle-Telegraph.*

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Judge: "Are you guilty or not guilty?"

Rastus: "Ef ah answered dat question, judge, it 'ould spoil dis here trial."

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Solicitor to Client: "Well Sandy, seeing that I knew your father, I'll make it six pounds."

Sandy: "Guid sake, mon! I'm glad ye did na ken my grandfather."

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Pedestrian (to traffic cop). Officer, what is the quickest way to the hospital?"

Cop. "Well, you cross here and you'll be there in 15 minutes.—*De Notenbraker (Amsterdam.)*

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A certain lawyer was asked by an acquaintance how it was that lawyers contrived to remain on such friendly terms with each other, although they were famed for their cutting remarks.

The lawyer looked at him with a twinkle eye, and remarked:

"Yes, but they're like scissors; they only cut what comes between."—*Japan Advertiser.*

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Client: "I want you to get some money back for me."

Lawyer: "On what ground?"

"Fraud. I sent a dollar to the fellow who advertised to tell how to take out wrinkles in the face."

"And did he tell you?"

"He did. He said to walk out in the open air at least once a day and the wrinkles would go out with me."

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An applicant for a job on the police force was being put through an oral examination. He answered the questions satisfactorily until he came to this one:

"If a fire broke out in a deaf and dumb institution on your beat, what would you do?"

He scratched his head for a moment and then answered brightly:

"I would ring the dumb bells."

He was ordered to report for duty the following morning.—*American Legion Weekly.*

## WEEKLY DIGEST.

**Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.**

*Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.*


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1. **Arrest**—Warrant.—Members of the metropolitan police force of the city of St. Louis have no authority to make an arrest for violation of the National Prohibition Act, unless armed with a warrant issued by one of the officers mentioned in Rev. St. U. S. § 1014, charging the person to be arrested with having violated such act.—Lenski v. O'Brien, Mo., 232 S. W. 235.

2. **Assault and Battery**—Insulting Words.—Insulting words may furnish excuse or justification in civil prosecutions.—Choate v. Pierce, Miss., 88 So. 627.

3. **Attorney and Client**—Compromise of Judgment.—An attorney, to whom a judgment was intrusted for collection, had no power, in the absence of express authority, to bind his client by a compromise of the amount due on the judgment, and if he agreed to accept less than was actually due in full satisfaction, the client was at liberty to ignore the compromise and collect the full amount.—Seaweard v. De Armond, Ore., 198 Pac. 916.

4. **Bankruptcy**—Judgment of Referee.—The refusal of the referee to appoint as trustee the persons first elected by the creditors, because that person did not reside at the place of the bankrupt's business, will be confirmed, where the evidence was not reported, and the referee's report did not show whether the duties of the trustee would be such as to require someone who would be in daily contact with the business.—In re Jaffee, U. S. D. C., 272 Fed. 899.

5.——Mortgaged Property.—It is within the discretion of the District Court to order the property of the bankrupt sold free of the mortgage covering it.—In re Leslie-Judge Co., U. S. C. C. A., 272 Fed. 886.

6.——Preference.—Where a bankrupt corporation had issued bonds secured by mortgage and such bonds had been accepted by a creditor in satisfaction of his claim, but after bankruptcy the bonds and mortgage were held void as creating a preference by an insolvent under the state law, the creditor was restored to his original rights as an unsecured creditor.—In re Franklin Brewing Co., U. S. C. C. A., 272 Fed. 828.

7.——Widow of Partner.—Evidence held insufficient to show that the widow of a deceased partner became a member of a partnership with the surviving members of the firm and subject to adjudication in bankruptcy as such.—Cameron v. National Surety Co., U. S. C. C. A., 272 Fed. 874.

8. **Banks and Banking**—Lien on Deposit.—Where a corporation's note to a bank gave the bank a lien on any deposit of the corporation with the bank for the payment of the note and all other debts owned by the bank against the corporation, and provided that they should become due and payable in case of insolvency or the occurrence of anything evidencing insolvency, the lien was not displaced or affected by the appointment of a receiver for the corporation, and the bank could apply a deposit on a note matured by the maker's insolvency, notwithstanding the receiver's appointment.—Wright v. Seaboard Steel & Manganese Corporation, U. S. C. C. A., 272 Fed. 807.

9. **Bills and Notes**—Contingency.—A contingency to avoid a note must be apparent either upon the face of the note or upon some contemporaneous written memorandum on the same paper.—Bavarian Brewing Co. v. Retkowski, Del., 113 Atl. 903.

10. **Carriers of Goods**—Good-faith Delivery.—In an action to recover the difference between the interstate through rate and the sum of the interstate and intrastate rates on lumber shipped to defendants at O. and reshipped to M., the real issue was whether the shipments were in fact shipments to O., with an actual good-faith delivery to defendants at O., and reconsignments actually by defendants, having received possession at O.; and the existence of an original and continuing intention to reship at O., for the purpose of saving expense, was not of itself sufficient to convert the shipments into through shipments if there was otherwise a good-faith delivery at O.—Baltimore & O. S. W. R. R. v. Settle, U. S. C. C. A., 272 Fed. 675.

11 **Carriers of Passengers**—Alighting.—In an action for negligence in throwing a passenger from a street car step while she was alighting, an instruction that defendant owed the obligation to permit the plaintiff to alight from the car in safey was erroneous, as being equivalent to a direction of a verdict for the plaintiff, because it made defendant liable as an insurer if it either failed to carry or discharge the plaintiff safely.—Weiser v. Dry Dock, E. B. & B. R. Co., N. Y., 188 N. Y. S. 856.

12.—Arrest.—It was not the duty of a railroad's conductor in the protection of a passenger arrested by an officer for inducing contract labor to leave the state, though he had information that the officer had no warrant, to assume from such fact that the arrest was unlawful, and that he was authorized or that it was his duty to prevent or protest against the arrest, or detention of the passenger, the railroad not being liable for his failure; to justify a conductor in interfering with a known officer in making an arrest on his train the case must be plain and unmistakable.—Chesapeake & O. R. Co. v. Pack, Ky., 232 S. W. 36.

13.——Assault.—Where the conductor makes a sudden, unprovoked willful and malicious assault on one riding on rear of street car, without warning, and without affording him an opportunity either to pay his fare or to leave the car in safety, the injured person is entitled to recover, regardless of whether or not the relation of passenger and carrier exists.—Lampe v. United Rys. Co. of St. Louis, Mo., 232 S. W. 249.

14.——Negligence.—Failure to assist crippled passenger, knowing he would probably be injured, is wanton negligence.—Mobile Light & R. Co. v. Therrell, Ala., 88 So. 677.

15.——Negligence.—It is not negligence for a carrier of passengers by railroad to announce the name of the station before the train stops, as required by Ky. St. § 784, nor to open the vestibule doors to enable passengers to alight from the train.—Louisville & N. R. Co. v. Spears' Adm's, Ky., 232 S. W. 60.

16. **Commerce**—Interstate Telegram.—Congress held to have assumed regulation of interstate telegram, superseding state penalty for delay.—Western Union Telegraph Co. v. Sims, Ind., 131 N. E. 520.

17.——Rate Regulation.—The authority given the Interstate Commerce Commission by Transportation Act Feb. 28, 1920, § 416 (3, 4), to prescribe a rate or fare on intrastate commerce to be observed by a carrier subject to its jurisdiction, if, after a full hearing, it shall find that

a rate or fare imposed by state authority "causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce," which rate or fare so prescribed shall be observed, while in effect by the carriers thereby, "the law of any state or the decision or order of any state authority to the contrary notwithstanding," is within the constitutional power of Congress to regulate interstate and foreign commerce.—Lehigh Valley R. Co. v. Public Service Commission, U. S. D. C., 272 Fed. 758.

18. **Corporations**—Adverse Claim.—Where a shareholder in a corporation without authority prepared an adverse claim against an application for a patent to adjacent mineral lands, he is not entitled to recover expenditures; it appearing the corporation did not request any such service, and that it made a settlement with the adjoining owner by which the area in conflict was secured.—Hartman v. Oatman Gold Mining & Milling Co., Ariz., 198 Pac. 717.

19.——Payment of Dividends.—Under proper agreement with the officers, directors, or other stockholders, a balance due on corporate stock may be paid by the application of dividends, but such payment can neither be effected by an unearned dividend nor by mere increment of capital assets without an actual distribution, and a mere general understanding between the stockholders that whenever the profits reach an amount equal to the minimum unpaid capital stock the subscriptions shall be considered paid does not amount to an actual distribution for such purpose.—Bank of Morgan v. Reid, Ga., 107 S. E. 555.

20.——Public Utility.—The franchise of the public utility corporation and the property devoted by it to the performance of the duties imposed on it by the franchise constitute an entirety, and the property, neither in its entirety nor in parcels, can be separated from the franchise, and since the franchise is deemed the principal thing and is an incorporeal hereditament, the entire property assumes the character of personalty.—Superior Water, Light & Power Co. v. City of Superior, Wis., 183 N. W. 255.

21.——"Transacting Business."—Under Rem. Code, 1915, § 206, permitting a corporation to be sued in any county where it transacts business, a corporation, by caring for, cultivating, and harvesting orchard lands acquired by foreclosure of its mortgage thereon, under Laws 1917, p. 291, § 37, held not "doing business" or "transacting business" in the county where the lands were situated.—State v. Superior Court Wash., 198 Pac. 744.

22. **Costs**—Attorney's Fee.—Where an injunction is sued out to restrain sales of property under mortgages, deeds of trust, or judgments, the 5 per cent. damages allowed under the provision of section 623, Code of 1906, for the dissolution of such injunction includes all damages, and no more can be recovered, and this is true even though there is an appeal to the Supreme Court from the judgment dissolving the injunction, and, consequently, where the 5 per cent. damage has been recovered in the court below, no attorney's fee will be allowed here for defending the judgment on appeal.—Smith v. Perkins, Miss., 88 So. 531.

23. **Deeds**—Delivery.—Where a grantor, in order to prevent her deceased brother's family from getting any of her property upon her death executed and recorded a deed of the same to another brother, from whom she had not heard for years, and who was reported to be dead, and retained the deed in her possession, there was no delivery, as the grantor did not intend to convey a present interest to her brother, but only to pass the title to him at her death.—Lawton v. Campau, Mich., 183 N. W. 203.

24. **Drains**—Liability of Sureties of Commissioner.—When a county drain commissioner issued orders in favor of a contractor before the work was begun, in violation of Comp. Laws 1915, § 4904, as amended by Pub. Acts 1917, No. 316, it was an act done by virtue of his office, and the sureties on his bond are liable to a bank which purchased such orders for the resulting injuries.—People v. O'Connell, Mich., 183 N.W.195.

25. **Electricity**—Negligence.—Where the owner of a building who had first produced his own electricity, maintaining his own dynamo and switchboard, contracted with a lighting company, and after such service was begun his employee received fatal injuries from electric shock received from the switch maintained by the owner, the current being furnished by the lighting company, such company is not liable for the death, resulting from the negligent manner in which the switchboard was maintained.—McFerran v. Merchants' Heat & Light Co., Ind., 131 N. E. 544.

26. **Eminent Domain**—Property Outside State.—The state cannot condemn property beyond its borders, and over which it exercises no jurisdiction whatever.—Superior Water, Light & Power Co. v. City of Superior, Wis., 183 N. W. 255.

27. **Fixtures** — Machinery Parts. — Machinery parts installed by tenant in a gin plant and which lessor had agreed that lessee might remove upon expiration of lease did not become a part of the real estate.—Taylor v. Walker, Ark., 231 S. W. 550.

28.——Rights of Parties.—In deciding whether an article used in connection with real property should be considered as a fixture and a part and parcel of the land, as between a grantor and a grantee or mortgagor and mortgagee, the usual tests are: (1) Real or constructive annexation of the article to the realty; (2) appropriation or adaptation to the use or purposes of the realty with which it is connected; (3) the intention to make the annexation permanent.—First State & Savings Bank v. Oliver, Ore., 198 Pac. 920.

29. **Guaranty** — Telegram. — Where creditor agreed to release hay held as security of payment of debt if debtor would get third party to guarantee the claim, and where debtor asked third party to wire creditor of his (debtor's) standing, without informing third party that creditor desired that third party become responsible for debt if debtor did not pay it, third party's telegram to creditor: "J—— debtor) reliable people. Any justifiable claim will be taken care of promptly"—did not guarantee payment of debt, but merely stated third party's opinion as to debtor's financial responsibility.—Fain Grocery Co. v. Early & Daniels Co., N. C., 107 S. E. 497.

30. **Infants**—Stock Transactions. — Stockbrokers, sued by an infant to recover moneys deposited with them to margin stock transactions, can rely on the defense that plaintiff infant, by his false and fraudulent representations as to his age, induced them to accept and disburse his moneys, and that, after such disbursement in accordance with his direction, he, on a plea of infancy, seeks to recover the sum from the brokers so deceived, as such action on his part constitutes an improper attempt to use his infancy, both as a sword and a shield.—Falk v. MacMasters, N. Y., 188 N. Y. S. 796.

31. **Innkeepers**—Negligence.—Where a hotel guest sues for an injury caused by the defective condition of an elevator or negligence in its operation, a presumption of negligence arises on proof of the injury, though defendant is a lessee of the building in which he conducts the hotel.—Bullard v. Rolader, Ga., 107 S. E. 548.

32. **Insurance**—Authority to Acquire Building.—The fact that a building acquired by an insurance company was equipped with a heating plant designed to heat an adjoining building also does not make the acquisition of such building an ultra vires act, where the company was authorized by Rev. St. Tex. 1911, art. 4735 to acquire and own one building site and office building for its use, and for lease and rental.—Farmers' Life Ins. Co. v. Foster Building & Realty Co., U. S. C. C. A., 272 Fed. 864.

33.——Note in Payment of Premium.—Where insured, who gave a note for the first premium on a life policy, retained the policy and made no effort to return it until the note had matured and the policy lapsed, he could not, after having the protection of the policy for one year, defeat an action on the note by showing that

he could not read or write, and was induced to sign the application by false representations as to the terms of the policy, and did not discover its real terms until after the note matured, and then offered to surrender it.—Wilcox v. Walker, Ga., 107 S. E. 560.

34.——Provisions of Policy.—Where an accident insurance policy, providing weekly indemnity for injuries and indemnity for death, provided indemnity for death sustained in the manner specified in certain clauses, excluding a clause covering accident on a public highway from contact with any moving conveyance or vehicle, it did not cover death from being struck by a train at a highway crossing, though another provision of the policy provided that it did not cover injuries sustained on the roadbed of any railway, "except while crossing at a public highway."—Williamson v. Great Eastern Casualty Co., Ind., 131 N. E. 522.

35.——"Voluntary Exposure."—The fact that the insured was killed while voluntarily aiding a peace officer in the fresh pursuit of persons reasonably suspected of having committed a crime, and seeking to escape, will not, as a matter of law, defeat recovery in an action upon a policy of accident insurance under a provision thereof that the insurer shall not be liable in case of "voluntary exposure to unnecessary danger"; but the question whether, in performing his duty as a citizen, the insured incurred needless risk is for the jury.—Sackett v. Masonic Protective Ass'n. Neb., 183 N. W. 101.

36. **Intoxicating Liquors**—Flavoring Extracts.—C. S. §§ 3367, 3368, 3369, 3370, 3373, prohibiting the sale of and solicitation for sale of intoxicating liquor and other concoctions containing alcohol, do not prohibit the sale of flavoring extracts tracts containing 40 per cent. of alcohol to be used for flavoring and not beverage purposes, under section 3375, excepting flavoring extracts from the applicability of such prohibition statutes.—State v. Barksdale, N. C., 107 S. E. 505.

37.——State Statute.—The state statute making unlawful the possession of intoxicating liquors others than alcohol is not superseded by the Volstead Act, enacted pursuant to Const. U. S. Amend. 18.—State v. Woods, Wash., 198 Pac. 737.

38.——Use of Automobile.—Under C. S. § 3403 providing that the sheriff seizing any liquors had or kept in violation of law shall seize the automobile used in conveying them, and that upon conviction defendant shall forfeit all right, title, and interest in the property so seized, it is only the right, title, and interest of the defendant in the automobile seized that may be forfeited, and, upon conviction of an employee for possessing and transporting spirituous liquors in his employer's automobile, the automobile is not subject to forfeiture.—State v. Johnson, N. C., 107 S. E. 433.

39. **Landlord and Tenant**—Breach of Contract.—Where a lease provided that the tenant might clear additional lands and cultivate them during the life of the lease without extra rental, he could not, after abandoning the premises before the expiration of the lease recover compensation for his services in clearing the land, without proof of any violation of the contract by the landlord, as a party who has not broken his contract is under no obligation to respond to the opposite party, otherwise than by performing his covenants under the contract.—Holton v. Blocker, Ga., 107 S. E. 550.

40.——Measure of Damages.—The measure of damages for injury to a leasehold estate is the difference in the market value immediately before and after the injury, subject to the qualifications that, if such property as may be destroyed or removed, although it is a part of the realty, has a value without reference to the soil on which it stands or out of which it grows, a recovery may be for the value of the thing destroyed or removed, and not for the difference in the value of the land or leasehold before and after such destruction or injury.—Producers' Supply Co. v. Maple Leaf Oil Co., Okla., 198 Pac. 577.

41.——Nuisance.—An owner of land whose tenant or licensee, after entry on it under his lease or license, maintains thereon a private nuisance erected by himself, working injury and detriment to an adjacent tract of land, as by altering the course of a natural stream of water, so as to make it carry and discharge its waters on and over such adjacent land, is not a necessary nor proper party to a bill by the owner of the injured land, to abate such nuisance by injunction, unless the work or business authorized by the lease or license was such in its nature and character as would necessarily contitute the nuisance or work the injury complained of.—**McMechen** v. Hitchman-Glendale Consol. Coal Co., W. Va., 107 S. E. 480.

42.——Remodeling.—Plans for the remodeling of an apartment house, by removing partitions and making other interior changes, without interfering with the foundations, walls, roofs or floors, showed no intent to demolish the building for the purpose of constructing a new one, within the meaning of Laws 1920, c. 942, defining circumstances under which a landlord may recover possession of real property, the test established being clear and free from ambiguity.—Rosman Realty Corporation v. Quinn, N. Y., 188 N. Y. S. 807.

43. **Libel and Slander**—Publication.—In a suit for slander, it is no defense that the words were spoken to, and not of, plaintiff, when heard by others.—Nichols v. Chicago, R. I. & P. Ry. Co., Mo., 232 S. W. 275.

44. **Life Estates**—Savings Deposit.—A savings bank holds in trust for the heirs of a deceased remainderman the amount of the deposit which passed on the death of the life tenant with authority to apply the principal, though the life tenant gave the deposit to one of the heirs, and the bank had considered it to belong to her.—Bishop v. Groton Sav. Bank, Conn., 114 Atl. 88.

45. **Master and Servant**—Admissibility of Evidence.—In an employee's action for injuries, evidence of a conversation between the employer's superintendent and the defendant's head machinist, who were plaintiff's superiors, and the employer's representatives, showing that they recognized and commented upon the existence of a leaking throttle valve of an engine, was admissible to show their knowledge of such defect, and hence to impute such knowledge to the employer, but was not admissible as original evidence of the existence of the defect.—Tennessee Coal, Iron & R. Co. v. Carson, Ala., 88 So. 650.

46.——Course of Employment.—Where the employer did not furnish transportation, but merely paid the extra wages amounting to car fare which the rules of the labor union required him to pay when the place of business was not within the single trolley fare limit, the employee being left free to pay his own transportation or not, he was not injured in the course of his employment when struck by a motorcycle as he crossed the highway at a place where he had been waiting for a trolley car to get a ride on a motor truck after he had left work.—Orsinie v. Torrance, Conn., 113 Atl. 924.

47.——Dependent.—The fact that a sister of a deceased employee had the right to compel her adult children to support her does not prevent her from being a dependent for whom it was the purpose of the Compensation Act to provide support, where she in fact relied upon contributions from the employee, since a "dependent" within the Workmen's Compensation Act is one who has relied upon the employee for support and has a reasonable expectation that such support will continue.—Driscoll v. Jewell Belting Co., Conn., 114 Atl. 109.

48.——Fireman Not "Employee."—A regularly appointed member of a city fire department is an officer and not an employee in the sense that he is not in service of contract of hire, so that firemen were not included in the Workmen's Compensation Act prior to its amendment by statute of 1917, p. 835, so as to make the term employee include all elected and appointed paid public officers.—Jackson v. Wilde, Cal., 198 Pac. 822.

49.——Loss of Eye.—A workman, a miner, who met with an accident to his left eye, resulting in an ulcer and permanent scar, reducing the vision in such eye to 5 per cent. lost the eye, within the meaning of the Workmen's Compensation Act, though he returned to work, taking up the same employment, and earning as much as before the accident, and compensation was

properly allowed during the course of development of the injury to a permanent result, so that the employer and insurer are not entitled to be credited upon the compensation allowed by the law for the loss of an eye with the weekly payments advanced during such course of development of the injury.—Stammers v. Banner Coal Co., Mich., 183 N. W. 21.

50.——**Traveling Salesman.**—A traveling salesman, performing the usual and customary services for his employer, who could rightfully discontinue work or be discharged at any time, and was actually controlled by his employer in the performance of his work, held entitled an employee within the Workmen's Compensation Act, p. 4, § 1, and not an independent contractor, although he was not upon the pay roll of the employer, and was not paid wages, receiving his compensation by way of commission.—United States Fidelity & Guaranty Co. v. Lowry, Tex., 231 S. W. 818.

51. **Municipal Corporations** — Charges for Water Meter.—The city of Montgomery furnishing meters to measure the water used by its customers so as to compute the charges permissible under Act Jan. 26, 1891, cannot make an extra charge for the meter.—City of Montgomery v. Smith, Ala., 88 So. 671.

52. **Physicians and Surgeons**—Negligence.—In an action against an X-ray specialist for injuries to a patient in treating her, instruction that the result of the treament in the particular case (that is, the sores caused) might be regarded as some evidence of negligence, was erroneous in view of proof that the specific result might come from proper treatment without negligence in a case of a person hypersensitive to the X-ray.—Antowill v. Friedmann, N. Y. 188, N. Y. S. 777.

53. **Principal and Agent**—Ratification.—Where salesman took two orders simultaneously from purchaser, an acceptance of one of the orders by the employer of the salesman was not an adoption or ratification of the salesman's act in contracting to deliver the other, where the employer upon receiving the orders immediately notified purchaser by telegram that it would accept only one order and would not accept the other, and only accepted that on condition that the time of shipment be changed, whereupon purchaser telegraphed instructions for the shipment of the one order, but did not refer to the other.—Deane v. Big Spring Distilling Co., Md., 113 Atl. 891.

54. **Railroads**—Duty to Dog on Track.—Trainmen, upon discovering a dog upon the track, or in known dangerous proximity thereto, are required to avoid unnecessary injury; but they may act upon the presumption that the dog will get out of the way in time to avoid injury, or that it will not move into danger, provided there is nothing in the circumstances of its approach or its manner of being upon the track to indicate to a reasonably prudent operator that it is helpless or indifferent to its surroundings and danger.—Hines v. Schrimscher, Ala., 88 So. 661.

55.——Negligence. — Making flying switch across footpath used by public, negligence.—Kansas City Southern Ry. Co. v. Craig, Okla., 198 Pac. 578.

56. **Sales**—Lever Act.—Lever Act, § 4, which has been construed by the United States Supreme Court as establishing no test for determination of reasonableness of prices and charges so as not to define a crime, is, for the same reason, insufficient in a civil action as a defense against recovery of the contract price of necessaries sold to defendant.—Standard Chemicals & Metals Corporation v. Waugh Chemical Corporation, N. Y., 131 N. E. 566.

57.——Liability for Lien.—A purchaser, or one who obtains possession, of personal property on which there is a lien evidenced by a duly recorded title note, is not personally liable on the note, where his name does not appear thereon, and he has not in any way agreed to pay it.—Central Kansas Motor Co. v. Kline, Kan., 198 Pac. 949.

58.——Rescission.—In an action against one who gave an order for four cars of lumber which specified, "If this car is satisfactory when it comes in, then we will take the other three cars, to be shipped at the rate of one car per month, or faster if we can get our customers to take it," correspondence held to show a cancellation of the order as to three cars by mutual consent.—Skillman Lumber Co. v. Love, Mich., 183 N. W. 210.

59.——**Warranty.**—Personalty may be sold with or without warranty, and where there is an express stipulation that the property is not warranted the law will not imply a warranty.—Crampton v. Lamonda, Vt., 114 Atl. 42.

60. **Sunday**—"Servile Labor."—Ordinarily, the selling of tickets and the managing and operating of a moving picture show on Sunday is not "servile labor," nor "selling, offering or exposing for sale of any commodity," within the meaning of section 2404, Rev. Laws 1910, and section 2405, as amended by Laws 1913, c. 204.—Treese v. State, Okla., 198 Pac. 889.

61. **Telegraphs and Telephones**—Public Use.—Though defendant's tenant gave plaintiff telephone company permission or a license to maintain a line over a rocky portion of defendant's farm, and plaintiff company, relying on the license, constructed a line, it cannot, having no right in the beginning ,enjoin defendant from interfering with its line, unless it condemns the right of way.—Western Telegraph & Telephone Co. v. Lavelle, Vt., 113 Atl. 870.

62. **Trade Unions** — Management. — Where a trade union incorporated as a membership corporation had affiliated with an unincorporated federation of such unions, the federation and its president did not thereby acquire authority to interfere with the internal management of the trade union, by reinstating an officer who had been suspended in accordance with the by-laws of the union; but the only remedy of the suspended officer was under the by-laws of the union, and the only action the federation could take was to withdraw the right of affiliation.—Kunze v. Weber, N. Y., 188 N. Y. S. 644.

63. **Trusts**—Resulting Trust.—Husband who furnished consideration for conveyance taken in his wife's name, now claiming after she had divorced him, remarried, and died, that the conveyance was one on resulting trust for him, held guilty of inexcusable laches in prosecuting his claim.—Clary v. Fleming, Mont., 198 Pac. 546.

64. **Vendor and Purchaser.**—Option.—Where a contract for the purchase of land on installments provided that in event of the purchaser's default the vendor might forfeit all rights under the agreement and retain amounts paid, the provision was one clearly for the benefit of the vendor giving him an option, but the purchaser has no option which will allow him to abandon the contract on pain of forfeiture of instaliments paid.—New Richmond Land Co. v. Ivanovich, Cal., 198 Pac. 221.

65. **Warehousemen.**—Loss by Fire.—Where an elevator firm procures a policy of fire insurance covering its own grain and that held in trust for which it is legally liable, and a fire consumes the elevator and its contents, it is the duty of the elevator firm to make claim and proof of loss to the insurance company for the grain thus held in trust and for which it is legally liable.—Farney v. Hauser, Kan., 198 Pac. 178.

66. **Wills**—Intent.—One to whom a will devised land with provision that his sisters were to have a home there when needed, and that if he did not comply with the condition, but refused to give them a home when sick or out of employment, the land should be divided equally between them, having after death of testatrix accepted under the will, his interest in the land was not affected either by any statement of his before testratrix's death, when his rights were not fixed, that his sisters should not have a home there, nor by the fact that after such death one of them, who would have had a right to go there for a home, did not seek it, believing from what he had so previously said that it would be refused.—Adams v. Henry, Tex., 231 S. W. 152.

67.——Life Estate.—An absolute power of sale or disposal attached to an express life estate will not enlarge it into a fee, although the power is to convey a fee, and where an estate for life is expressly given, and the power of disposition is annexed to it, the fee does not pass under such devise, but the naked power to dispose of the fee, although it is otherwise in case there is a gift generally of the estate, with power of disposition annexed.—Gildersleeve v. Lee, Ore., 198 Pac. 246.